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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,035	12/01/2003	Thomas D. Jackson	TDJ-226r	4726

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EXAMINER

SPISICH, MARK

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,035

Applicant(s)

JACKSON, THOMAS D.

Examiner

Mark Spisich

Art Unit

1744

[Signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/2003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: "42" (page 10, line 22) and "42a & 42b" (page 10, line 23) are incorrect in the #42 is the back side.

Appropriate correction is required.

Comment re Claim 6

It is suggested that -- side -- be inserted after "back" (claim 6, line 4)

Claim Rejections - 35 USC § 112

1. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are drawn to a cleaning device and as such should positively recite the cleaning unit. At present, claim 1 only recites a body portion to which a cleaning unit is **mountable** (claim 1, line 3) and is not a positive recitation of the cleaning unit. Dependent claims 11 and 12 seem to suggest that applicant did intend to positively recite the cleaning unit in claim 1. It is suggested that "mountable" (claim 1, line 3) be changed to -- mounted --. Applicant should review the claims for any additional informalities.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4,7 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Cazel (USP 1,760,815). The patent to Cazel discloses a shoe cleaning device comprising a unitary frame comprising a body portion (3) to which a cleaning unit (7) is mounted and an appendage portion (4) including apertures (5) for threaded fasteners for attaching the device to a supporting surface. The recitation of the bumper fails to materially limit the structure of the cleaning device.
4. Claims 1,3,4,7,8 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Callender (USP 1,534,156). The patent to Callender discloses a shoe cleaning device comprising (in the embodiment of fig 2) a unitary frame comprising a body portion (A) for mounting a cleaning unit (E) and an appendage portion (lower right in fig 2) with each of the body and appendage portions including apertures. The recitation of "for engaging a bumper on a vehicle" does not materially limit the structure of the claim(s).
5. Claims 1-4,7,11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Linville et al (USP 1,389,201). The patent to Linville discloses a shoe cleaning device comprising a unitary frame comprising a body portion (14,15,16) and an appendage portion including an aperture for an screw (20) for attachment to a support surface and further including a cleaning unit (17) secured to the body portion. Again, the recitation of "bumper" fails to materially limit the structure of the claim(s).
6. Claims 1,2,5,7,11 and 12 are rejected under 35 U.S.C. 102(a) as being anticipated by MacDonald (USP 6,530,105). The patent to MacDonald discloses a shoe

cleaning comprising a frame comprising a body portion as well as an appendage portion (52,54) and further including a cleaning unit (22) mounted to the body portion. The term "unitary" in claim 1 is a broad term and is essentially equivalent to the term "integral". Such term has been held to be sufficiently broad to embrace constructions united by such means as fastening and welding. In re Hotte, 177 USPQ 326,328 (CCPA 1973).

7. Claims 1,2,5-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Peake (USP 5,437,075). Applicant's use of the term "unitary" alone is broader than intended. With regard to claim 9, the appendage (12) need only have apertures (14). It is noted that claim 9 does not positively recite the strap ties.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linville (USP 1,389,201). The patent to Linville discloses the invention substantially as claimed with the exception of the strap. One of ordinary skill would deem it obvious to utilize any number of known mechanical fastenings instead of or in addition to the screws (20), including the recited strap(s) of claims 9-10.

Allowable Subject Matter

10. The following claim drafted by the examiner and considered to distinguish patentably over the art of record in this application, is presented to applicant for consideration:

A sport shoe cleaning device for cleaning debris from a sole of a sports shoe, the device comprising:

a unitary frame member formed from a single sheet of material, said single sheet of material being bent to form an appendage portion and a body portion of the frame member, the appendage portion being adapted to engage a bumper on a vehicle, the body portion being formed in a substantially triangular configuration, the triangular body portion including back side, a bottom side and a front side, the bottom side extending between the back and front sides, the front side formed by tab portions extending from the back and bottom sides, the appendage portion extending from the back side proximate the front side; and

a cleaning unit mounted to the front side of the body portion.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Wheat and Veith are pertinent to vehicle mounted shoe cleaners and the others to "unitary" or one-piece frame members,

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich
Primary Examiner
Art Unit 1744

MS